

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H. R. 8
OFFERED BY MR. POMEROY OF NORTH DAKOTA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Certain and Immediate
3 Estate Tax Relief Act of 2005".

**4 SEC. 2. RETENTION OF ESTATE TAX; REPEAL OF CARRY-
5 OVER BASIS.**

6 (a) IN GENERAL.—Subtitles A and E of title V of
7 the Economic Growth and Tax Relief Reconciliation Act
8 of 2001, and the amendments made by such subtitles, are
9 hereby repealed; and the Internal Revenue Code of 1986
10 shall be applied as if such subtitles, and amendments, had
11 never been enacted.

12 (b) SUNSET NOT TO APPLY.—Section 901 of the Eco-
13 nomic Growth and Tax Relief Reconciliation Act of 2001
14 shall not apply to title V of such Act.

15 (c) CONFORMING AMENDMENTS.—Subsections (d)
16 and (e) of section 511 of the Economic Growth and Tax
17 Relief Reconciliation Act of 2001, and the amendments
18 made by such subsections, are hereby repealed; and the

1 Internal Revenue Code of 1986 shall be applied as if such
2 subsections, and amendments, had never been enacted.

3 **SEC. 3. MODIFICATIONS TO ESTATE TAX.**

4 (a) IMMEDIATE INCREASE IN EXCLUSION EQUIVA-
5 LENT OF UNIFIED CREDIT.—Subsection (c) of section
6 2010 of the Internal Revenue Code of 1986 (relating to
7 applicable credit amount) is amended by striking all that
8 follows “the applicable exclusion amount” and inserting
9 “. For purposes of the preceding sentence, the applicable
10 exclusion amount is \$3,500,000 (\$3,000,000 in the case
11 of estates of decedents dying before 2009).”.

12 (b) FREEZE MAXIMUM ESTATE TAX RATE AT 47
13 PERCENT; RESTORATION OF PHASEOUT OF GRADUATED
14 RATES AND UNIFIED CREDIT.—

15 (1) Paragraph (1) of section 2001(c) of such
16 Code is amended by striking the last 2 items in the
17 table and inserting the following new item:

“Over \$2,000,000	\$780,800, plus 47 percent of the ex- cess of such amount over \$2,000,000.”.
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18 (2) Paragraph (2) of section 2001(c) of such
19 Code is amended to read as follows:

20 “(2) PHASEOUT OF GRADUATED RATES AND
21 UNIFIED CREDIT.—The tentative tax determined
22 under paragraph (1) shall be increased by an

1 amount equal to 5 percent of so much of the amount
2 (with respect to which the tentative tax is to be com-
3 puted) as exceeds \$10,000,000. The amount of the
4 increase under the preceding sentence shall not ex-
5 ceed the sum of the applicable credit amount under
6 section 2010(c) and \$159,200.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to estates of decedents dying, and
9 gifts made, after December 31, 2005.

10 **SEC. 4. VALUATION RULES FOR CERTAIN TRANSFERS OF**
11 **NONBUSINESS ASSETS; LIMITATION ON MI-**
12 **NORITY DISCOUNTS.**

13 (a) IN GENERAL.—Section 2031 of the Internal Rev-
14 enue Code of 1986 (relating to definition of gross estate)
15 is amended by redesignating subsection (d) as subsection
16 (f) and by inserting after subsection (c) the following new
17 subsections:

18 “(d) VALUATION RULES FOR CERTAIN TRANSFERS
19 OF NONBUSINESS ASSETS.—For purposes of this chapter
20 and chapter 12—

21 “(1) IN GENERAL.—In the case of the transfer
22 of any interest in an entity other than an interest
23 which is actively traded (within the meaning of sec-
24 tion 1092)—

1 “(A) the value of any nonbusiness assets
2 held by the entity shall be determined as if the
3 transferor had transferred such assets directly
4 to the transferee (and no valuation discount
5 shall be allowed with respect to such nonbusi-
6 ness assets), and

7 “(B) the nonbusiness assets shall not be
8 taken into account in determining the value of
9 the interest in the entity.

10 “(2) NONBUSINESS ASSETS.—For purposes of
11 this subsection—

12 “(A) IN GENERAL.—The term ‘nonbusi-
13 ness asset’ means any asset which is not used
14 in the active conduct of 1 or more trades or
15 businesses.

16 “(B) EXCEPTION FOR CERTAIN PASSIVE
17 ASSETS.—Except as provided in subparagraph
18 (C), a passive asset shall not be treated for pur-
19 poses of subparagraph (A) as used in the active
20 conduct of a trade or business unless—

21 “(i) the asset is property described in
22 paragraph (1) or (4) of section 1221(a) or
23 is a hedge with respect to such property,
24 or

1 “(ii) the asset is real property used in
2 the active conduct of 1 or more real prop-
3 erty trades or businesses (within the mean-
4 ing of section 469(c)(7)(C)) in which the
5 transferor materially participates and with
6 respect to which the transferor meets the
7 requirements of section 469(c)(7)(B)(ii).

8 For purposes of clause (ii), material participa-
9 tion shall be determined under the rules of sec-
10 tion 469(h), except that section 469(h)(3) shall
11 be applied without regard to the limitation to
12 farming activity.

13 “(C) EXCEPTION FOR WORKING CAP-
14 ITAL.—Any asset (including a passive asset)
15 which is held as a part of the reasonably re-
16 quired working capital needs of a trade or busi-
17 ness shall be treated as used in the active con-
18 duct of a trade or business.

19 “(3) PASSIVE ASSET.—For purposes of this
20 subsection, the term ‘passive asset’ means any—

21 “(A) cash or cash equivalents,

22 “(B) except to the extent provided by the
23 Secretary, stock in a corporation or any other
24 equity, profits, or capital interest in any entity,

1 “(C) evidence of indebtedness, option, for-
2 ward or futures contract, notional principal con-
3 tract, or derivative,

4 “(D) asset described in clause (iii), (iv), or
5 (v) of section 351(e)(1)(B),

6 “(E) annuity,

7 “(F) real property used in 1 or more real
8 property trades or businesses (as defined in sec-
9 tion 469(c)(7)(C)),

10 “(G) asset (other than a patent, trade-
11 mark, or copyright) which produces royalty in-
12 come,

13 “(H) commodity,

14 “(I) collectible (within the meaning of sec-
15 tion 401(m)), or

16 “(J) any other asset specified in regula-
17 tions prescribed by the Secretary.

18 “(4) LOOK-THRU RULES.—

19 “(A) IN GENERAL.—If a nonbusiness asset
20 of an entity consists of a 10-percent interest in
21 any other entity, this subsection shall be ap-
22 plied by disregarding the 10-percent interest
23 and by treating the entity as holding directly its
24 ratable share of the assets of the other entity.

25 This subparagraph shall be applied successively

1 to any 10-percent interest of such other entity
2 in any other entity.

3 “(B) 10-PERCENT INTEREST.—The term
4 ‘10-percent interest’ means—

5 “(i) in the case of an interest in a cor-
6 poration, ownership of at least 10 percent
7 (by vote or value) of the stock in such cor-
8 poration,

9 “(ii) in the case of an interest in a
10 partnership, ownership of at least 10 per-
11 cent of the capital or profits interest in the
12 partnership, and

13 “(iii) in any other case, ownership of
14 at least 10 percent of the beneficial inter-
15 ests in the entity.

16 “(5) COORDINATION WITH SUBSECTION (B).—
17 Subsection (b) shall apply after the application of
18 this subsection.

19 “(e) LIMITATION ON MINORITY DISCOUNTS.—For
20 purposes of this chapter and chapter 12, in the case of
21 the transfer of any interest in an entity other than an in-
22 terest which is actively traded (within the meaning of sec-
23 tion 1092), no discount shall be allowed by reason of the
24 fact that the transferee does not have control of such enti-
25 ty if the transferee and members of the family (as defined

1 in section 2032A(e)(2)) of the transferee have control of
2 such entity.”.

3 (b) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to transfers after the date of the
5 enactment of this Act.

Amend the title so as to read: “A bill to amend the
Internal Revenue Code of 1986 to retain the estate tax
with an immediate increase in the exemption, to repeal
the new carryover basis rules in order to prevent tax in-
creases and the imposition of compliance burdens on
many more estates than would benefit from repeal, and
for other purposes.”.